

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DEBRA ZANETTI and DANIEL
TRONGONE, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

IKO MANUFACTURING, IKO
INDUSTRIES, LTD., IKO SALES,
LTD.,
IKO PACIFIC, INC., and IKO
CHICAGO, INC.,

Defendants.

Case No. 09-cv-02017

**JOINT MOTION TO STAY PROCEEDINGS PENDING DECISION
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

Plaintiffs Debra Zanetti and Daniel Trongone (collectively, “Plaintiffs”) and Defendant IKO Manufacturing, Inc. (together with Plaintiffs, the “Moving Parties”), jointly move this Court to stay all proceedings in this action pending a decision by the Judicial Panel on Multidistrict Litigation (“JPML”) on IKO Manufacturing Inc.’s pending motion to transfer this and three other putative class actions for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 (“MDL Motion”). In support of this motion, the Moving Parties submit a supporting legal memorandum, and further state as follows:

1. This case is one of four putative class actions currently pending in four federal district courts in New York, Illinois, New Jersey, and Washington:

- A. *Czuba v. IKO Manufacturing, Inc.*, Case No. 1:09-cv-00409-WMS
(Western District of New York)
- B. *McNeil v. IKO Manufacturing, Inc.*, Case No. 1:09-cv-04443
(Northern District of Illinois)
- C. *Zanetti v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-02017-DRD-MAS (District of New Jersey)
- D. *Hight v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-00887-RSM (Western District of Washington)

2. The plaintiffs in these actions allege that roofing shingles manufactured by IKO Manufacturing, Inc. and installed on homes purchased by the plaintiffs failed prematurely. Collectively, these four actions are referred to as the “IKO Roofing Shingle Actions.”

3. On August 6, 2009, IKO Manufacturing, Inc. submitted for filing with the JPML its MDL Motion seeking to transfer the IKO Roofing Shingle Actions for coordinated or consolidated pretrial proceedings. On August 27, 2009, Plaintiffs responded to the MDL Motion, and joined in the request for transfer of the IKO Roofing Shingle Actions. The Moving Parties therefore agree that the IKO Roofing Shingle Actions should be transferred.

4. The Moving Parties respectfully request the entry of a stay of pretrial proceedings in this action pending a decision by the JPML on the MDL Motion.

The plaintiffs and IKO Manufacturing, Inc. are contemporaneously filing similar motions for a stay in the other three IKO Roofing Shingle Actions.

5. Courts routinely exercise the inherent authority to stay pretrial proceedings during the pendency of a motion to transfer pretrial proceedings pursuant to 28 U.S.C. § 1407. *See Nekritz v. Canary Capital Partners, LLC*, No. 03-5081, 2004 U.S. Dist. LEXIS 12473, at *6 (D.N.J. Jan. 12, 2004) (Debevoise, J.) (granting a stay to “permit the most efficient possible use of the courts’ and the parties’ resources, and it will eliminate the danger” of inconsistent decisions). That is because interim stays: (1) promote judicial economy; and (2) avoid inconsistent results among district judges in different district courts. *Id.*, *see also Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 90-4378, 1991 U.S. Dist. LEXIS 1431, at *4 (D.N.J. Feb. 4, 1991) (granting a stay to conserve judicial resources).

6. As explained in greater detail in the supporting memorandum, a stay here will serve both such goals. First, the requested stay will conserve the resources of this Court and promote judicial economy. Second, temporarily staying proceedings in this action will eliminate the risk that inconsistent decisions would be reached simultaneously by different district judges on common legal and factual pretrial issues in the IKO Roofing Shingle Actions, including those involved in a motion to dismiss or a motion for class certification.

7. In addition, the Moving Parties agree that staying this proceeding for a short amount of time will not unfairly prejudice any of the parties to this litigation because it is still in the early stages. A complaint has been filed, but no responsive pleading has been filed and no discovery has been taken. Indeed, this Court has already entered an order staying the time for IKO Manufacturing Inc. to answer or otherwise plead until the JPML rules on the MDL Motion. [Dkt. # 19].¹

8. Staying these proceedings will also serve as a courtesy to the judges on the JPML because it will allow them a reasonable amount of time to rule on the MDL Motion.

WHEREFORE, for the reasons set forth above, and for the additional reasons set forth in the accompanying memorandum of law, Plaintiffs and IKO Manufacturing, Inc. jointly request that the Court stay all pretrial proceedings pending the JPML's decision on the MDL Motion.

¹ The courts in *McNeil* (N.D. Ill.) and *Hight* (W.D. Wash.) have likewise entered orders staying the time for IKO Manufacturing, Inc. to answer or otherwise plead until the JPML rules on the MDL Motion.

Dated: September 22, 2009

Jointly and respectfully submitted,

**DEBRA ZANETTI and
DANIEL TRONGONE,**

IKO MANUFACTURING INC.,

By: /s/ Michael M. Weinkowitz
One of Their Attorneys

By: /s/ Vanessa M. Kelly
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2009, I served a copy of the foregoing document to all counsel of record via the ECF/CM document filing system.

/s/ Vanessa M. Kelly